IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION NO.700 OF 2007

1. Navnit M. Ruparelia
2. Kantaben Ruparelia
3. Rashmi P. Ruparelia
4. Samir P. Ruparelia
   All of Mumbai, Indian Inhabitants,
   residing at 6th flr. Kailash Kutir,
   Maharashtra Nagar,
   L. T. Road, Borivali (West),
   Mumbai 400 092.

5. Smt. Pratima P. Rajpopat,
   residing at C/7-8, Sahakar,
   SBI Society, 5th Road,
   Santacruz (East),
   Mumbai 400 055.

6. Narayan M. Ruparelia,
   202, Express Tower,
   carrying on business at L.T. Road,
   Borivli (West),
   Mumbai 400 092.

7. Hina C. Mawani,
   residing at 3, Mahalaxmi Society,
   Gokhale Road, Dahanukar Wadi,
   Kandivli (West), Mumbai 400 067.

8. Devika J. Karia,
   residing at 301, Dudhiba Ashish,
   Station Road, Kalyan (West),
   Dist. Thane. ..Petitioners.

Vs.

1. Municipal Corporation of Greater
   Mumbai , having its head office
   at Municipal Head Office,

Mahapalika Marg, Fort,
Mumbai 400 001.

2. The Municipal Commissioner,
having his office at Municipal
Corporation of Greater Mumbai,
Mahapalika Marg, Fort,
Mumbai 400 001.

3. The Assistant Commissioner,
R Central Ward, Municipal Market
Building, 2nd floor, S.V. Road,
Borivli (West), Mumbai 400 092.

4. Asst. Commissioner (Markets),
Municipal Corporation of Greater
Mumbai, 1st flr. Jyotiba Phule Market,
Mumbai

5. Ashwin P. Dedhia,
carrying on business under the
name and style of Able Cut Piece
Centre, and Able Novelties
Shop NO.6, Narayan Niwas,
L.T. Road, Borivli (West),
Mumbai 400 092.

6. Narsi Kantilal Limbachya
7. Smt. Samuben Kantilal Limbachya
both carrying on business under the
name and style of Vishnu Hair Cutting
Saloon, at Shop No.5, Narayan Niwas,
L. T. Road, Borivli (West),
Mumbai 400 092.

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Mr. P.K. Samdhani, Senior Advocate with Ms. N.V. Sanglikar for the Petitioners.

Ms. Aruna Savla for Respondents 1 to 4.

Mr. H.S.S. Murthy for Respondent No.5.

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CORAM : **SWATANTER KUMAR, C.J. &**
**DR. D.Y. CHANDRACHUD, J.**

Judgment reserved on 4th July, 2007.
Judgment pronounced on 27th September, 2007.

**JUDGMENT (Per Dr. D.Y. Chandrachud, J.)**

1. The Petitioners claim to be the co-owners of land bearing CTS No.599 situated at Borivli. Among the structures situated thereon were six shops. Two shops were in the occupation of tenants viz. Respondents 5 and 6. On 28th March, 2005, five notices were issued by the Municipal Corporation to the Petitioners informing them that the shop / structure covered by each notice was affected by the 18.30 mtr. wide regular line of road viz. Lokmanya Tilak Road at Borivli (West). The notice called upon the First Petitioner to produce documents in relation to the authenticity of the structures. By a letter dated 2nd April, 2005, the First Petitioner expressed his readiness to handover possession of three out of the five shops affected by the road line stating that this covered more than 75% of the total area affected. Insofar as the

remaining two shops were concerned, the First Petitioner stated that they were in the occupation of tenants and hence, the Municipal Corporation was requested to accommodate the tenants at any other suitable premises. On 22nd November, 2005 the First Petitioner handed over possession of the affected setback area by removing three shops which were covered by the proposed road widening. By a letter dated 22nd November, 2005 the Municipal Corporation took over possession. At this stage it would be material to note, that the case of the Petitioners is that the tenancy / licence of the tenants of the remaining two shops were terminated by the Petitioners and suits were pending before the Small Causes Courts and in the City Civil Court. The letter of the Municipal Corporation called upon the Petitioners to ensure the expeditious disposal of the pending cases.

2. On 27th December, 2005 the Assistant Commissioner, R/ Central in the Municipal Corporation called upon the First Petitioner to furnish an undertaking that he would withdraw the case against the tenants in case the Municipal Corporation were to offer permanent alternative accommodation to the tenants for clearing the bottle neck in the area that was affected by the proposal of

road widening. The claim of the Petitioners for the grant of FSI against the handing over of the setback area was to be considered in accordance with the prevailing policy. An undertaking was submitted by the First Petitioner on 30th September, 2005. Subsequently on 25th February, 2006 the Assistant Commissioner called upon the First Petitioner to convey his willingness to bear the cost of the alternative accommodation that would be offered to the respective tenants. By a letter dated 3rd March, 2006 the First Petitioner conveyed his acceptance on 23rd June, 2006. The Assistant Commissioner (Markets) called upon the First Petitioner to pay an amount of Rs.1,01,850/- towards the cost of construction of the alternative accommodation for the two tenants. The First Petitioner paid the amount and furnished an intimation to the Assistant Commissioner (Markets) on 26th June, 2006. On 27th June, 2006 the First Petitioner was directed to construct partition walls and shutters on the site which was carried out by the First Petitioner under an intimation dated 17th July, 2006.

3. The grievance of the Petitioners arises out of the fact that on 16th January, 2007 Respondents 1 to 3 took possession only of the area affected by the road widening from the tenants.

According to the Petitioners the tenancy / licence of the occupants having been terminated by the Petitioners, the Municipal Corporation had no right to take possession from a gratuitous licensee or occupant against whom Court cases were pending. It has been urged that it was incumbent upon the Municipal Corporation to allot alternative accommodation to the affected tenants and to evict them for the aforesaid purpose. Reliance has been placed on a circular dated 25th February, 2004 in that regard. The grievance of the Petitioners is that the Municipal Corporation has resiled from its earlier assurance that it would allot alternative accommodation to the tenants.

4. In the circumstances, the relief that has been sought before the Court is for a direction to the Municipal Corporation and its officers to evict / shift Respondents 5 to 7 from the shops in their occupation on CTS No.599.

5. An affidavit in reply has been filed in these proceedings by the Assistant Engineer (Maintenance) R/ Central Ward. It has been stated therein that the Municipal Corporation initiated a proposal to clear a bottle neck on Lokmanya Tilak Road at Borivli

(West) in accordance with its policy guidelines dated 26th February, 2004. Six commercial structures of the Petitioners were affected by the road widening and a proposal was submitted for clearing the affected portion of the shops which came within the alignment of the road line. A proposal for the allotment of permanent alternative accommodation through the PAP (Project Affected Persons) quota was approved by the Deputy Municipal Commissioner, Zone 5, and Additional Municipal Commissioner – Western Suburbs and Eastern Suburbs on 10th February, 2006. Out of the six shops, two were in the possession and occupation of the Petitioners themselves, which were removed. Similarly shop No.3 of which possession was taken in pursuance of the order of the Small Causes Court was removed and shop No.4 was also removed. The Municipal Corporation has stated that the remaining two shops which were partly affected by the proposal of road widening were occupied by tenants, Respondents 5 and 6. When the Municipal Corporation issued allotment letters, granting permanent accommodation to Respondents 5 and 6 on 24th July, 2006, (pasted at site on 8th August, 2006) they moved the City Civil Court in L.C. Suit 4057 and 4072 of 2006. An injunction was issued by the City Civil Court from demolishing structures. During

the hearing of the Notice of Motion in the suits, Respondents 5 and 6 furnished a proposal on 11th November, 2006 that they would remove the affected portion of their shops and would not claim any compensation or alternative accommodation from the Corporation. This proposal was found to be fair since only a portion of the remaining two shops was affected by road widening. The Municipal Corporation accordingly accepted the proposal and informed the City Civil Court on 28th November, 2006 that it would demolish only the affected portion of the structures occupied by Respondents 5 and 6. This statement was accepted and the suits were disposed of. Following this, the affected part of the structures of Respondents 5 and 6 were demolished and the road came to be widened. In doing so, it has been stated that the Municipal Corporation followed its policy guidelines dated 25th February, 2004. Moreover, it has been stated that in Exhibits H and I to the Petition, the Petitioners have admitted that their three shops were affected to the extent of over 75% by the proposal of road widening.

6. Having heard the learned counsel appearing for the parties, we are of the view that it would neither be appropriate nor

proper for this Court to grant the relief which has been sought in these proceedings under Article 226 of the Constitution. The principal relief that has been sought is a direction to the Municipal Corporation to evict or shift the tenants from the shops which are in their occupation. There is an averment in the Petition itself that proceedings are pending before the Small Causes Court and in the City Civil Court. Be that as it may, we are firmly of the view that the Petitioners have no right in the circumstances such as the present to obtain a decree for eviction in these proceedings. The Petitioners would have to be relegated to seek relief before the Court of competent jurisdiction. As noted above, there is an averment in paragraph 8 of the writ petition that recourse has already been taken to such proceedings.

7. Insofar as the Municipal Corporation is concerned, it is undoubtedly true that the Corporation had moved a proposal for offering permanent alternative accommodation in the form of a non-residential tenements through the PAP quota which is approved by the competent authority. In pursuance thereof the Petitioners deposited an amount of Rs.1,01,850/-. The averment in this regard in paragraph 10 of the Writ Petition has not been

denied. It emerges from the record that the aforesaid proposal could not be implemented since in the meantime, the tenants moved the City Civil Court and the Trial Court granted an order of injunction in L.C. Suit 4057 and 4072 of 2006. Insofar as the shops in the occupation of the Petitioners were concerned, over 75% of the area was affected by the road widening proposal. On the other hand in the reply it has been stated that only some portion of the shops of the tenants were affected. Hence, the Corporation accepted the proposal of the tenants that they would remove only the affected portion of their shops and would not claim any compensation or alternative accommodation. It was only on the basis of the acceptance of that proposal that the Municipal Corporation was in a position to implement widening of the Lokmanya Tilak Road at Borivli (West).

8. Be that as it may, the Petitioners having deposited an amount of Rs.1,01,850/- towards the cost of providing alternative accommodation to the tenants, it is only appropriate and proper that the Municipal Corporation should consider their request for the refund of the amount since it is now an admitted position before the Court that the tenants have not been shifted to any alternative

accommodation. In the circumstances, we dispose of this petition by permitting the Petitioners to move the Third and Fourth Respondents for refund of the amount of Rs.1,01,850/- deposited towards the cost of construction of providing alternative accommodation to the two tenants. In the event that such a representation is made within a period of two weeks from the date of receipt of a certified copy of this order, an appropriate decision will be taken thereon by the Third and Fourth Respondents in accordance with law in any event within a period of four weeks thereafter.

The Petition shall stand disposed of in the aforesaid terms.

There shall be no order as to costs.

CHIEF JUSTICE

DR. D.Y. CHANDRACHUD, J.